

**REMARKS**

The Office Action dated September 26, 2006 has been received and considered. In this response, claim 1 has been amended, claims 11, 21, and 72-78 have been canceled without prejudice or disclaimer, and claims 79-104 have been added. Support for the amendments may be found in the specification and drawings as originally filed. Further, the claims have been renumbered as requested by the Office Action. The claim numbers referenced herein are based on this renumbering. Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

**Allowability of Claims 51-59 and 63-70**

The Applicants note with appreciation the indication at page 5 of the Office Action that claims 51-59 and 63-70 are allowed.

**Non-Statutory Patentable Subject Matter Rejection of Claims 1-11, 13-21, and 71-74**

At page 2 of the Office Action, claims 1-11, 13-21, and 71-74 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. This rejection is respectfully traversed with amendment.

To be eligible for patent protection, the claimed invention as a whole must accomplish a practical application; i.e., it must produce a “useful, concrete and tangible result.” *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 149 F. 3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998). Turning to the “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, OG dated November 22, 2005 (hereinafter, “Interim Guidelines”) provide that:

If the examiner determines that the claim does not entail the transformation of an article, then the examiner shall review the claim to determine if the claim provides a practical application that produces a useful, tangible and concrete result. In determining whether the claim is for a “practical application,” the focus is not on whether the steps taken to achieve a particular result are useful, tangible and concrete, but rather that the final result achieved by the claimed invention is “useful, tangible and concrete.” The claim must be examined to see if it includes anything more than a § 101 judicial exception. If the claim is directed to a practical application of the § 101 judicial exception producing a result tied to the

physical world that does not preempt the judicial exception, then the claim meets the statutory requirement of 35 U.S.C. § 101.

*Interim Guidelines*, p. 20.

Reviewing the subject matter presently recited by independent claim 1, it is clear that the invention of claim 1 result in a useful, tangible and concrete result. To wit, claim 1 presently recites the feature of “determining, at the video transcoder, a second quantization value for the first macroblock based on the first quantization value.” The claimed “second quantization value” that is determined is concrete in that it constitutes an actual thing, namely a number. It further is tangible as the second quantization value is determined at the video transcoder and thus is part of the video transcoder or alternately store at the video transcoder, both of which are tangible. Further, one of ordinary skill in the art will recognize that quantization values are used in the encoding and transcoding of video data and thus the claimed “second quantization value” is clearly useful. Thus, the final results achieved by the claimed invention of claim 1, the “second quantization value,” is “useful, tangible, and concrete” and thus claim 1 meets the statutory requirement of § 101.

Claims 21 and 71-74 have been canceled without prejudice or disclaimer, thereby obviating their rejection.

In view of the foregoing, reconsideration and withdrawal of the non-statutory subject matter of claims 1-11, 13-21, and 71-74 is respectfully requested.

### **Enablement Rejection of Claim 11**

At page 3 of the Office Action, claim 11 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. To remove issues in an effort to advance the present application, claim 11 has been canceled without prejudice or disclaimer. Reconsideration and withdrawal of this rejection therefore is respectfully requested.

### **Rejections of Claims 71-77**

At page 3 of the Office Action, claims 71-73, 75 and 77 are rejected under 35 U.S.C. § 102(e) as being anticipated by Furukawa (U.S. Patent No. 6,834,080). At page 5 of the Office Action, claims 74 and 76 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Furukawa in view of Legall (U.S. Patent No. 5,929,916). Claims 71-77 have been canceled

without prejudice or disclaimer to remove a contended issue for purposes of advancing the present application. Withdrawal of these rejections therefore is respectfully requested.

#### **Addition of New Claims 79-104**

New claims 79-104 have been added. Support for the addition of these claims can be found in the specification and figures as originally filed. No new matter is introduced by these claims. Entry of claims 79-104 therefore is respectfully requested.

The cited references fail to disclose or suggest, individually or in combination, the particular combinations of features recited by new claims 79-104. To illustrate, independent claim 79 recites the features of “determining a modified quantization value based on a quantization value associated with a macroblock of a video stream and a non-linear function when a fullness of a buffer of a display device is within a predetermined range, the non-linear function based on the fullness of the buffer of the display device.” Independent claim 92 recites similar subject matter. Further, it is noted that this subject matter is similar to the subject matter identified as allowable by the Office. None of the references disclose or suggest that a quantization value is determined based on a non-linear function when a fullness of a buffer is within a predetermined range, nor do they teach that any such non-linear function is based on the fullness of the buffer. Accordingly, the cited references fail to disclose or suggest each and every feature of claims 79 and 92 and their dependent claims.

#### **Conclusion**

The Applicants respectfully submit that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

The Applicants believe no additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-1835.

Respectfully submitted,

/Ryan S. Davidson/

Ryan S. Davidson, Reg. No. 51,596

LARSON NEWMAN ABEL POLANSKY & WHITE, LLP

5914 W. Courtyard Dr., Suite 200

Austin, Texas 78730

(512) 439-7100 (phone)

(512) 439-7199 (fax)

February 26, 2007

Date